

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SENATE BILL 1004**

### **AN ACT**

AMENDING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 219, SECTION 2; REPEALING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 195, SECTION 3; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-1382, Arizona Revised Statutes, as amended by  
3 Laws 2007, chapter 219, section 2, is amended to read:

4 28-1382. Driving or actual physical control while under the  
5 extreme influence of intoxicating liquor: trial by  
6 jury: sentencing: classification

7 A. It is unlawful for a person to drive or be in actual physical  
8 control of a vehicle in this state if the person has an alcohol concentration  
9 of 0.15 or more within two hours of driving or being in actual physical  
10 control of the vehicle and the alcohol concentration results from alcohol  
11 consumed either before or while driving or being in actual physical control  
12 of the vehicle.

13 B. A person who is convicted of a violation of this section is guilty  
14 of driving or being in actual physical control of a vehicle while under the  
15 extreme influence of intoxicating liquor.

16 C. At the arraignment, the court shall inform the defendant that the  
17 defendant may request a trial by jury and that the request, if made, shall be  
18 granted.

19 D. A person who is convicted of a violation of this section:

20 1. Except as otherwise provided in this paragraph, shall be sentenced  
21 to serve not less than thirty consecutive days in jail and is not eligible  
22 for probation or suspension of execution of sentence unless the entire  
23 sentence is served. A person who has an alcohol concentration of 0.20 or  
24 more shall be sentenced to serve not less than forty-five consecutive days in  
25 jail and is not eligible for probation or suspension of execution of sentence  
26 unless the entire sentence is served.

27 2. Shall pay a fine of not less than two hundred fifty dollars, except  
28 that a person who has an alcohol concentration of 0.20 or more shall pay a  
29 fine of not less than five hundred dollars. The fine prescribed in this  
30 paragraph and any assessments, restitution and incarceration costs shall be  
31 paid before the assessment prescribed in paragraph 3 of this subsection.

32 3. Shall pay an additional assessment of two hundred fifty dollars. If  
33 the conviction occurred in the superior court or a justice court, the court  
34 shall transmit the monies received pursuant to this paragraph to the county  
35 treasurer. If the conviction occurred in a municipal court, the court shall  
36 transmit the monies received pursuant to this paragraph to the city  
37 treasurer. The city or county treasurer shall transmit the monies received  
38 to the state treasurer. The state treasurer shall deposit the monies received  
39 in the driving under the influence abatement fund established by  
40 section 28-1304.

41 4. May be ordered by a court to perform community restitution.

42 5. Shall be required by the department, on receipt of the report of  
43 conviction, to equip any motor vehicle the person operates with a certified  
44 ignition interlock device pursuant to section 28-3319. In addition, the  
45 court may order the person to equip any motor vehicle the person operates  
46 with a certified ignition interlock device for more than twelve months

1 beginning on the date of reinstatement of the person's driving privilege  
2 following a suspension or revocation or on the date of the department's  
3 receipt of the report of conviction, whichever occurs later. The person who  
4 operates a motor vehicle with a certified ignition interlock device under  
5 this paragraph shall comply with article 5 of this chapter.

6 6. Shall pay an additional assessment of one thousand dollars to be  
7 deposited by the state treasurer in the prison construction and operations  
8 fund established by section 41-1651. This assessment is not subject to any  
9 surcharge. If the conviction occurred in the superior court or a justice  
10 court, the court shall transmit the assessed monies to the county treasurer.  
11 If the conviction occurred in a municipal court, the court shall transmit the  
12 assessed monies to the city treasurer. The city or county treasurer shall  
13 transmit the monies received to the state treasurer.

14 7. Shall pay an additional assessment of one thousand dollars to be  
15 deposited by the state treasurer in the state general fund. This assessment  
16 is not subject to any surcharge. If the conviction occurred in the superior  
17 court or a justice court, the court shall transmit the assessed monies to the  
18 county treasurer. If the conviction occurred in a municipal court, the court  
19 shall transmit the assessed monies to the city treasurer. The city or county  
20 treasurer shall transmit the monies received to the state treasurer.

21 E. ~~Notwithstanding FOR A CONVICTION PURSUANT TO subsection D,~~  
22 ~~paragraph 1~~ of this section, at the time of sentencing ~~if the person has an~~  
23 ~~alcohol concentration of less than 0.20, the judge may suspend all but ten~~  
24 ~~days of the sentence if the person completes a court ordered alcohol or other~~  
25 ~~drug screening, education or treatment program. If the person fails to~~  
26 ~~complete the court ordered alcohol or other drug screening, education or~~  
27 ~~treatment program and has not been placed on probation, the court shall issue~~  
28 ~~an order to show cause to the defendant as to why the remaining jail sentence~~  
29 ~~should not be served ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF~~  
30 ~~THIRTY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR~~  
31 ~~TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS~~  
32 ~~ALCOHOL MONITORING.~~

33 F. If within a period of eighty-four months a person is convicted of a  
34 second violation of this section or is convicted of a violation of this  
35 section and has previously been convicted of a violation of section 28-1381  
36 or 28-1383 or an act in another jurisdiction that if committed in this state  
37 would be a violation of this section or section 28-1381 or 28-1383, the  
38 person:

39 1. Except as otherwise provided in this paragraph, shall be sentenced  
40 to serve not less than one hundred twenty days in jail, sixty days of which  
41 shall be served consecutively, and is not eligible for probation or  
42 suspension of execution of sentence unless the entire sentence has been  
43 served. A person who has an alcohol concentration of 0.20 or more shall be  
44 sentenced to serve not less than one hundred eighty days in jail, ninety of  
45 which shall be served consecutively, and is not eligible for probation or

1 suspension of execution of sentence unless the entire sentence has been  
2 served.

3 2. Shall pay a fine of not less than five hundred dollars, except that  
4 a person who has an alcohol concentration of 0.20 or more shall pay a fine of  
5 not less than one thousand dollars. The fine prescribed in this paragraph  
6 and any assessments, restitution and incarceration costs shall be paid before  
7 the assessment prescribed in paragraph 3 of this subsection.

8 3. Shall pay an additional assessment of two hundred fifty dollars.  
9 If the conviction occurred in the superior court or a justice court, the  
10 court shall transmit the monies received pursuant to this paragraph to the  
11 county treasurer. If the conviction occurred in a municipal court, the court  
12 shall transmit the monies received pursuant to this paragraph to the city  
13 treasurer. The city or county treasurer shall transmit the monies received  
14 to the state treasurer. The state treasurer shall deposit the monies received  
15 in the driving under the influence abatement fund established by  
16 section 28-1304.

17 4. Shall be ordered by a court to perform at least thirty hours of  
18 community restitution.

19 5. Shall have the person's driving privilege revoked for at least one  
20 year. The court shall report the conviction to the department. On receipt  
21 of the report, the department shall revoke the person's driving privilege and  
22 shall require the person to equip any motor vehicle the person operates with  
23 a certified ignition interlock device pursuant to section 28-3319. In  
24 addition, the court may order the person to equip any motor vehicle the  
25 person operates with a certified ignition interlock device for more than  
26 twelve months beginning on the date of reinstatement of the person's driving  
27 privilege following a suspension or revocation or on the date of the  
28 department's receipt of the report of conviction, whichever is later. The  
29 person who operates a motor vehicle with a certified ignition interlock  
30 device under this paragraph shall comply with article 5 of this chapter.

31 6. Shall pay an additional assessment of one thousand two hundred  
32 fifty dollars to be deposited by the state treasurer in the prison  
33 construction and operations fund established by section 41-1651. This  
34 assessment is not subject to any surcharge. If the conviction occurred in  
35 the superior court or a justice court, the court shall transmit the assessed  
36 monies to the county treasurer. If the conviction occurred in a municipal  
37 court, the court shall transmit the assessed monies to the city treasurer.  
38 The city or county treasurer shall transmit the monies received to the state  
39 treasurer.

40 7. Shall pay an additional assessment of one thousand two hundred  
41 fifty dollars to be deposited by the state treasurer in the state general  
42 fund. This assessment is not subject to any surcharge. If the conviction  
43 occurred in the superior court or a justice court, the court shall transmit  
44 the assessed monies to the county treasurer. If the conviction occurred in a  
45 municipal court, the court shall transmit the assessed monies to the city

1 treasurer. The city or county treasurer shall transmit the monies received  
2 to the state treasurer.

3 ~~G. Notwithstanding subsection F, paragraph 1 of this section, at the time of sentencing, if the person has an alcohol concentration of less than 0.20, the judge may suspend all but sixty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.~~

4  
5  
6  
7  
8  
9  
10 G. FOR A CONVICTION PURSUANT TO SUBSECTION F OF THIS SECTION, AT THE TIME OF SENTENCING, THE JUDGE MAY ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF NINETY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR A MINIMUM OF TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS ALCOHOL MONITORING.

11 H. In applying the eighty-four month provision of subsection F of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

12 I. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

13 J. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.

14 Sec. 2. Repeal

15 Section 28-1382, Arizona Revised Statutes, as amended by Laws 2007, chapter 195, section 3, is repealed.

16 Sec. 3. Emergency

17 This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.